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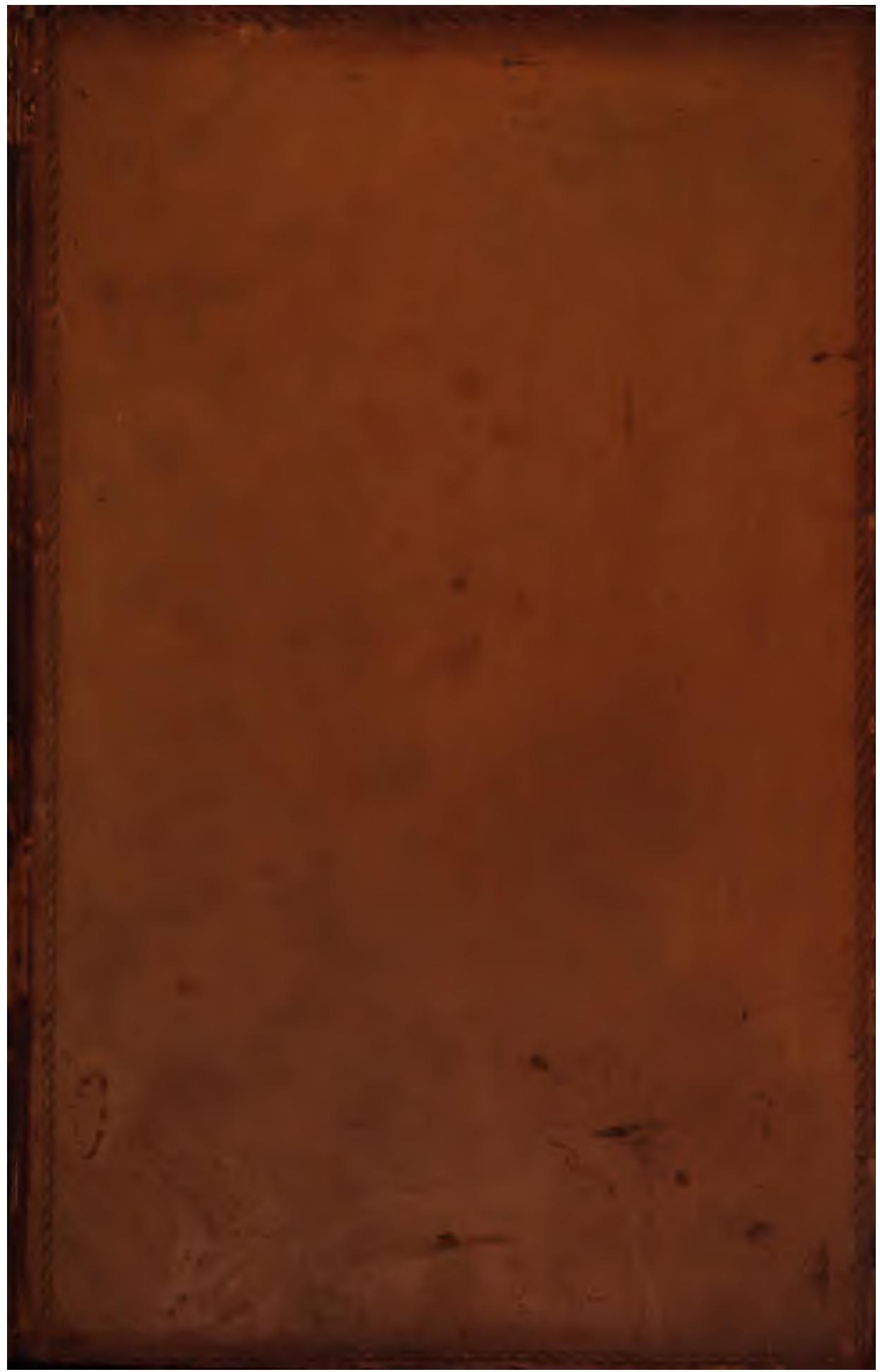
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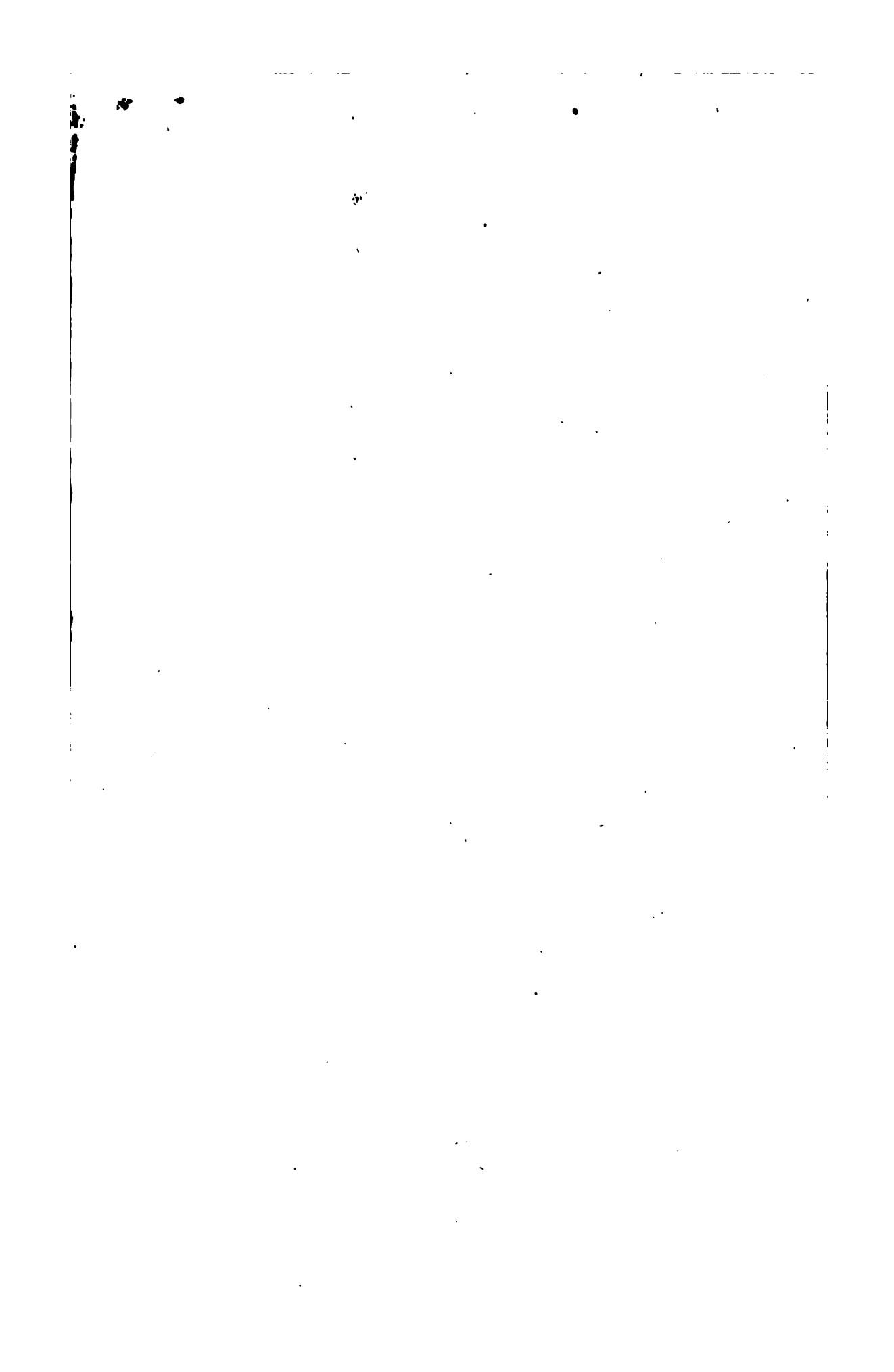
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A

DIGEST

OF

The Laws of England

RESPECTING

REAL PROPERTY.

BY WILLIAM CRUISE, Esq.

BARRISTER AT LAW.

THE FOURTH EDITION,

REVISED AND CONSIDERABLY ENLARGED,

BY HENRY HOPELY WHITE, Esq.

BARRISTER AT LAW, OF THE MIDDLE TEMPLE.

IN SEVEN VOLUMES.

VOLUME VII.

CONTAINING

APPENDIX AND INDEXES.

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C O N T E N T S

OF THE

SEVENTH VOLUME.

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* * * Since the Appendix was printed, the Editor, through the kindness of Mr. BERE, the Counsel who made the application in the case of *ex parte* Mary Gill, (1 Bing. N. S. p. 168.) noticed *infra*, pp. 14, 15. has been favoured with the sight of the affidavit made by Mary Gill: from this it appears that, by settlement made on her marriage with Hugh Gill, the estate was limited to her husband for life, with remainder to trustees during his life to preserve, with remainder to herself for life, with several remainders over. The Reporter, therefore, was mistaken in supposing Mary Gill's life estate contingent,—it was unquestionably vested, though reversionary. Leave was granted of course; the Court of C. P. could entertain no doubt under the circumstances of the application.

A DIGEST
OF
The Laws of England
RESPECTING
REAL PROPERTY.

APPENDIX.

APPORTIONMENT OF RENTS, &c.

THE subject of the apportionment of rents by statute is discussed in the third volume of this work. It is there stated that at common law, if a tenant for life died before the day on which the rent became due, where the lease determined by the death of the tenant for life, his executors could not claim an apportionment of the rent; nor could the remainder-man or reversioner claim that part of it which accrued during the life of the tenant for life: so that the tenant, as to that period of his tenancy, did not pay any thing.

tit. 28. ch. 3.
s. 44. p. 306.

The statute 11 Geo. 2. c. 19. s. 15. which was passed to 11 Geo. 2. c. 19. remedy this defect is there cited: it gives the executors of any such tenant for life, dying on the day of payment, the whole, if before that day, a proportional part of the rent. Mr. Cruise then remarks, that the statute only extended to rents s. 46. reserved on leases which determined by the death of the lessor; for where the lease did not determine on that event, the person in remainder or reversion became entitled to the whole rent, due from the day of payment preceding the death of the tenant for life. In section 47 the editor observed, that it did not seem settled, whether the provisions of the above statute 11 Geo. 2. c. 19. extended to a lease not pursuant to the enabling statute, made by tenant in tail, and that the cases, which

Appendix.

bear upon the point, have arisen between the executors of the tenant in tail and the remainder-man, and not between the tenant in tail and the lessee; and that all the cases appeared to have turned upon the fact of actual payment of the rent by the lessee to the remainder-man. The reader is referred to the cases there cited (pp. 307—310.)

**4 & 5 Will. 4.
c. 22.**

The recent statute 4 & 5 Will. 4. c. 22. (a) was passed to obviate the doubts which had existed respecting the statute 11 Geo. 2.; and to which in the preamble it refers in the following words: “Whereas doubts have been entertained whether the provisions of the recited act apply to every case in which the interests of tenants determine on the death of the person, by whom such interests have been created, and on the death of any life or lives, for which such person was entitled to the lands demised, although every such case is within the mischief intended to have been remedied and prevented by the said act, and it is therefore desirable that such doubts should be removed by a declaratory law; and whereas by law, rents, annuities and other payments, due at fixed or stated periods, are not apportionable (unless express provision be made for the purpose) from which it often happens that persons (and their representatives) whose income is wholly or principally derived from these sources, by the determination thereof, before the period of payment arrives, are deprived of means to satisfy just demands, and other evils arise from such rents, annuities, and other payments not being apportionable, which evils require remedy.” The act then proceeds to enact, that rents reserved and made payable on any demise or lease of lands, tenements, or hereditaments, which have been and shall be made, and which leases or demises determined, or shall determine on the death of the person making the same, (although such person was not strictly tenant for life thereof) or, on the death of the life or lives for which such person was entitled to such hereditaments, shall, so far as respects the rents reserved by such leases, and the recovery of a proportion thereof by the person granting the same, his, or her executors, or administrators (as the case may be) be considered as within the provisions of the said recited act.

Rents reserved
on leases deter-
mining on the
death of the per-
son making them
(though not
strictly tenant
for life) or on
the death of the
tenant *pur autre
vis*, to be con-
sidered as within
the provisions of
the recited act.

(a) This and the following acts, cited in the Appendix, were passed subsequently to the printing of the fifth volume of this work.

Section 2 enacts, that from and after the passing of the act all rents service reserved on any lease by a tenant in fee, or for any life interest, or by any lease granted under any power, (and which leases shall have been granted after the passing of the act) and all rents charge and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description in the united kingdom of Great Britain and Ireland, made payable, or coming due at fixed periods under any instrument that shall be executed after the passing of the act, or (being a will or testamentary instrument) that shall come into operation after the passing of the act, shall be apportioned so and in such manner, that on the death of any person interested in any such rents, annuities, pensions, dividends, moduses, compositions, or other payments as aforesaid, or in the estate, fund, office, or benefice from, or in respect of which the same shall be issuing or derived, or on the determination by any other means whatsoever of the interest of any such person, he or she, and his or her executors, administrators, or assigns, shall be entitled to a proportion of such rents, annuities, pensions, dividends, moduses, compositions, and other payments, according to the time which shall have elapsed from the commencement or last period of payment thereof respectively, (as the case may be) including the day of the death of such person, or of the determination of his or her interest, all just allowances and deductions in respect of charges on such rents, annuities, pensions, dividends, moduses, compositions, and other payments being made; and that every such person, his or her executors, administrators, and assigns, shall have such and the same remedies at law, and in equity, for recovering such apportioned parts of the said rents, annuities, pensions, dividends, moduses, compositions, and other payments, when the entire portion, of which such apportioned parts shall form part, shall become due and payable, and not before, as he, she, or they would have had for recovering and obtaining such entire rents, annuities, pensions, dividends, moduses, compositions, and other payments, if entitled thereto; but so that persons liable to pay rents reserved by any lease or demise, and the lands, tenements, and hereditaments, comprised therein, shall not be resorted to for such apportioned parts specifically, as aforesaid, but the entire rents of which such portions shall form a part, shall be received and recovered by the person or persons, who, if

All rents, annuities and other payments coming due at fixed periods to be apportioned.

Subject to all just deductions.

Remedies for obtaining the apportioned parts.

the act had not passed, would have been entitled to such entire rents; and such portions shall be recoverable from such person or persons by the parties entitled to the same under the act, in any action or suit at law, or in equity.

Act not to apply to certain cases.

The third section provides, that the provisions in the act contained, shall not apply to any case in which it shall be expressly stipulated that no apportionment shall take place, or to annual sums made payable in policies of assurance of any description.

ESCHEAT AND FORFEITURE OF REAL AND PERSONAL PROPERTY HELD IN TRUST.

*Vol. I. pp. 412.
447-8. Vol. III.
pp. 402. &c.
417—419.* The reader is referred to former pages of the present work, for some observations respecting the forfeiture and escheat of trust property, through the attainer for felony or treason of the trustee, or his dying without heirs. The recent statute 4 & 5

*4 & 5 Will. 4.
c. 23.* Will 4. c. 23. was passed to amend the laws on those subjects. It recites, that whereas great inconvenience has been found to result to persons beneficially entitled to real or personal property, by the escheating or forfeiture thereof to his Majesty, to corporations, to lords of manors, and others, in consequence of the death without heirs, or the conviction for treason or felony of a trustee, in whom or in whose name the same is vested, and that it was expedient that the same should be remedied.

*If trustee or
mortgagee of
any land die
without an heir,
the Court of
Chancery may
appoint a person
to convey.*

After fixing the sense to be attached to various words in the act, the second section enacts, that where any person seised of any land, upon any trust or by way of mortgage, dies without an heir, it shall be lawful for the Court of Chancery to appoint a person to convey such land in like manner as is provided by statute 11 Geo. 4. and 1 Will. 4. c. 60.; (a) in case such trustee or mortgagee had left an heir, and it was not known who was such heir, and such conveyance shall be as effectual as if there was such heir.

*Lands, &c. vest-
ed in any
trustee shall not
be escheated by
reason of the at-
tainer or con-
viction of such
trustee.*

By section 3 it is enacted, that no lands, chattels, or stock, vested in any person upon any trust, or by way of mortgage, or any profits thereof, shall escheat or be forfeited to his Majesty,

(a) The reader will find the clauses in the act, referred to in Vol. IV. p. 18. s. 29. and note (a). In re Goddard, 1 Myl. & K. 25. Vol. V. p. 119. s. 20.

his heirs, or successors, or to any corporation, lord of a manor, or other person, by reason of the attainer or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainer or conviction had taken place.

By section 4 it is enacted, that the several provisions of the act shall extend to every case of a trustee having some beneficial estate or interest in the same subject, or some duty as trustee to perform, and also to every case of a trust arising or resulting by implication of law or by construction of equity.

By section 5 it is enacted, that nothing therein contained shall prevent the escheat or forfeiture of any land, chattels, or stock, vested in any such trustee or mortgagee, so far as relates to any beneficial interest therein of any such trustee or mortgagee, but such land, chattels, or stock, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if the act had not passed.

Section 6, after declaring that it is expedient to relieve persons beneficially entitled to real or personal property, which has already escheated or become forfeited to his Majesty, to corporations, to lords of manors, or others by any of the means aforesaid, enacts, that in all cases where before the passing of the act, any person possessed of, or entitled to any land, chattels, or stock, or any right to or interest in any land, chattels, or stock, as a trustee thereof, either in whole or in part, or jointly with some other trustee or trustees, shall have died without an heir, or shall have been convicted of any offence, whereby the said land, chattels, or stock, or any of them have escheated, or been forfeited, or have become subject to any escheat or forfeiture, then and in every or any such case the said land, chattels, or stock, or the right thereto or interest therein, which hath escheated or been forfeited, or become subject to escheat or forfeiture by reason thereof, shall be subject to the order, control, and disposition of the Court of Chancery, for the use of the party beneficially interested therein, in such manner and subject in all respects to such rights and incidents, and to such orders and regulations of the said Court, under the provisions of the said act of the 11th year of King George the Fourth, and of the first year of his present Majesty, as if such person so dead

To whom and to what cases the provisions of the act shall extend.

The act not to prevent the escheat of any beneficial interest.

Where any person possessing lands, &c., as a trustee shall have died without heirs, or have been convicted before the passing of the act, the lands, &c. shall become subject to the control of the Court of Chancery.

*Appendix.***Proviso.**

without an heir, or so convicted as aforesaid, were out of the jurisdiction of, or not amenable to the process of the said Court, without having been so convicted. And it was thereby provided that nothing in the said sixth clause contained, shall extend to any land, chattels, or stock, at the time of the passing of the act vested in any person by virtue of any grant thereof made, subsequently to the time when such escheat or forfeiture first occurred, or to any lands, chattels, or stock, which more than twenty years prior to the passing of the act shall have been actually vested in possession or reduced into possession by the party entitled thereto, by virtue of any such escheat or forfeiture.

EXCHANGE OF LANDS LYING IN COMMON FIELDS.4 & 5 Will. 4.
c. 30.

In Vol. III. pp. 80-81. and Vol. V. p. 5. some observations will be found upon the subject of enclosure of common lands, and to which the reader is referred. The object of the recent statute 4 & 5 Will. 4. c. 30. is to facilitate exchanges of pieces of land lying intermixed, and dispersed in common fields, meadows, and pastures, for other pieces of land, either lying therein, or being part of the enclosed lands in the same or any adjoining parish.

In the general inclosure act, 41 Geo. 3. c. 109. there is a provision (s. 15.) authorising the commissioners to allot by way of exchange, any lands, &c., new allotments or old enclosures in one parish, in lieu of other lands, &c., new allotments or old enclosures within the same parish, or other adjoining parishes or places, so that such exchanges were made with the consent of the owners or other persons therein specified, and, if the lands &c. were held in right of any church, or other ecclesiastical benefice, with the consent of the patron and bishop of the diocese. But the act does not contain any provision for communicating to the lands received in exchange, the title which governed the lands given in exchange. Such a clause is usually introduced into local inclosure acts, by means of which, as a learned author justly observes, a change of *land* is effected between the exchanging parties, but not a change of *title*. Where

this clause was wanting it has been the general practice to investigate the title both of the lands given and the lands taken in exchange, frequently involving vendors whose titles are so circumstanced in great difficulty and expense. The recent statute 4 & 5 Will. 4. c. 30. which extends to England and Wales, (s. 28.) remedies the evil above alluded to, and by section 24 enacts that from and immediately after any such deed of exchange as thereinbefore mentioned, shall have been duly executed by the necessary parties ; the land, which by such deed is given in exchange, shall be exonerated and discharged from the uses, trusts, powers, conditions, limitations, and restrictions, charges and incumbrances then affecting the same, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations, and restrictions, charges and incumbrances, as affected the land taken in exchange at the same date ; and the land so taken in exchange shall be exonerated and discharged from all uses, trusts, powers, conditions, limitations and restrictions, charges and incumbrances then affecting the same, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations and restrictions, charges and incumbrances, as affected the lands given in exchange at the same time.

4 & 5 Will. 4.
c. 30.

Lands given in exchange to be exonerated from the uses affecting them at the time, and to become subject to such uses as affected the lands taken.

And by section 25, it is enacted that no person to whom any land shall have been granted or conveyed in exchange, according to the provisions of the act, shall at any time thereafter be evicted from the peaceable and quiet possession of such land, by reason or in consequence of any person claiming right thereto, through any title prior to that of, or through any defect of title in, the person by whom such land may have been granted or conveyed ; but nevertheless, it shall be lawful for the person claiming such right ; and he is thereby authorized and empowered to use, exercise, and enjoy all such, and the same powers and remedies in trying his right to, and in obtaining and recovering possession of, the land, which shall have been granted or conveyed in exchange, as the person so claiming would, in case the act had not been made, have been enabled to use, exercise, or enjoy, in trying the right to, and recovering the possession of the land, in exchange for which, the same shall have been so granted or conveyed under the authority of the act.

After exchange
party not to be
evicted.

Doubts have been entertained, whether the exchange clause

Appendix.

in the general inclosure act authorised the exchange of freehold for copyhold; but now by the glossary clause, (27) of the recent statute, the word "land" is made to extend to every species of land of every tenure.

Proprietors of lands in common fields may exchange the same.

By section 1, it is enacted, that from and after the passing of the act, it shall be lawful for any person who shall be seised or possessed of, or entitled in possession to, any land, in any common field, as tenant in fee simple, or in fee tail, general or special, or for life or lives, or by the courtesy of England, or for any other estate of freehold, or for years, determinable on any life or lives, or for any term of years, whereof one hundred years shall be unexpired, and for the guardian, trustee, feoffee, for charitable or other uses, husband or committee, of such person, who, at the time of making any exchange authorised by the act, shall be an infant, idiot, lunatic, or feme covert, or under any other disability, by such deed, and with such consent as thereafter mentioned, to grant and convey such land, or any part thereof, to any other person in lieu of, and in exchange for any other land, whether lying in the same or any other common field, or for any inclosed land lying within the same, or any adjoining parish, and to accept and take from such other person any land in lieu of, and in exchange for the land, in such common field.

All persons enabled to give land in exchange for such common field land.

By section 2, it is enacted, that it shall be lawful for any person who shall be seised, or possessed of, or entitled in possession to any land, which it may be desirable to exchange for the land in such common field, whether such person shall be tenant in fee simple or in fee tail, general or special, or for life or lives, or by the courtesy of England, or for any other estate of freehold, or for years, determinable on any life or lives, or for any term of years, whereof one hundred years shall be unexpired, and for the guardian, trustee, feoffee, for charitable or other uses, husband or committee, of such person who shall be an infant, idiot, lunatic, or feme covert, or under any other disability, to consent and agree to such exchange, and to grant and convey such land to the person proposing to make such exchange, in lieu of, and in exchange for the land lying in such common field, subject to the provisions thereafter contained.

Land given in exchange by persons having limited interests to be of equal

By section 3, it is provided, that when any such exchange shall be made by any person having a less estate or interest than in fee simple in the land, to be by him granted or conveyed in

exchange, or shall be made by any person under any disability, value with lands taken. the land to be so taken in exchange, shall at the time of making such exchange he, or shall by the payment of a sufficient sum for equality of exchange, be made, of equal value with, or not of less value than, the land to be granted or conveyed in exchange.

By section 4, it is enacted, that whenever any exchange shall be proposed to be made under the authority of the act, and either of the parties thereto shall have a less estate or interest in the land to be by him granted or conveyed in exchange than a fee simple, or shall be under any disability, such exchange shall not be completed, unless the person to whom the next immediate vested estate of freehold in remainder or reversion shall have been limited (provided such person shall be of the full age of twenty-one years, and being a female, shall be unmarried,) shall consent thereto, and shall testify such consent by signing the draft deed of exchange thereinafter mentioned, and such consent shall be sufficient for the purpose of authorising such exchange, notwithstanding the person giving the same, may have an equitable estate only in the land intended to be conveyed in exchange, or may have previously disposed of, or charged, or incumbered his reversionary estate therein. And it is thereby provided, that if the person to whom such next immediate vested estate in remainder or reversion may have been limited, shall, at the time of such exchange, happen to be an infant or feme covert, or an idiot or lunatic, then and in such case it shall be lawful for the guardian, or husband, or committee of such infant, feme covert, idiot or lunatic, (such guardian, husband, or committee, not being himself the person by whom the exchange is proposed to be made) to consent to such exchange, and to sign the draft deed of exchange, in his or her stead; provided that whenever the guardian, or husband, or committee of such infant, feme covert, idiot or lunatic, shall himself be the person by whom such exchange is proposed to be made, then and in such case it shall be lawful for the Court of Chancery, upon petition to be preferred to the said court in a summary way, to appoint a person to act as protector to such infant, feme covert, idiot or lunatic, for the purposes of the act; and if he shall think fit so to do, to consent to such exchange, and to sign the draft deed of exchange in the stead of such infant, feme

If exchange
made by any
person having
only a limited
interest, or being
under disability
the consent of
the person next
in remainder to
be obtained.

In case the per-
son next in re-
mainder should
be an infant,
&c.

covert, idiot or lunatic, or of his or her guardian, husband, or committee.

The 5th section declares what consent shall be requisite to effectuate any exchange of lands held in right of any ecclesiastical benefice.

The following sections, 6 to 11 inclusive, provide for the execution of the deeds of exchange and their registration.

And sections 12 to 22 inclusive, relate to the depositing of the deed of exchange with the Clerk of the Peace, and the course of procedure requisite in case objections are made to the deed.

Section 23. It is to be inferred from the marginal note, that this section was intended to provide for the application of money paid for equality of exchange, where the party entitled to receive it is *under disability*: but through the omission of some essential words, after the clause within a parenthesis, and to follow the word "be," the whole section of the act is unintelligible. The clause, as it now stands, absurdly directs that the *party*, instead of the *money* (if exceeding twenty pounds), shall be paid with all convenient speed into the Bank of England.

It would seem, that the above mistake will materially curtail the beneficial operation of the act, in all cases where money is to be paid for equality of exchange to persons incapable of giving a discharge, by reason of the disabilities of infancy, lunacy, idiocy, or coverture.

It is much to be regretted that similar mistakes do not unfrequently occur in modern acts of parliament.

Section 24 contains the general saving clause; and section 27 is the glossary clause, declaring the meaning to be assigned to words occurring in the act, particularly the words "person," "benefice," and "land."

TITHES.

In Vol. III. pp. 51, 52, the leading enactments are noticed of the stat. 2 & 3 Will. 4. c. 100. for shortening the time required in claims of *modus decimandi*, or exemption from or discharge of tithes. That act has been amended by the recent statute

4 & 5 Will. 4. c. 83. the preamble of which, states the necessity 4 & 5 Will. 4.
c. 83. for the amendment. After reciting that certain provisions were made by the former act, limiting the period within which, in cases of claims of a *modus decimandi*, the payment or render of such modus, and in cases of claims of or to any exemption from, or discharge of tithes, by composition real or otherwise, the enjoyment of the land without payment or render of tithes or money, or other matter in lieu thereof, should be shown to have taken place. And further reciting that it was by the said act further enacted, that nothing therein contained should be prejudicial or available, to or for any plaintiff or defendant in any suit or action relative to any of the matters therein mentioned, then commenced or which might be thereafter commenced during the then session of Parliament, or within one year from the end thereof: and that since the passing of the said act, a great number of suits had been instituted for the recovery of tithes, under the apprehension on the part of the plaintiffs, that they would be precluded by the said act from recovering the tithes to which they claimed to be entitled, unless they prosecuted their claims within the periods limited by the said act; and further stating that it was deemed advisable to enable the defendants in such suits, to cause all further proceedings therein to be suspended until the end of the then next session of Parliament, upon the terms thereafter expressed. It was enacted, that Proceedings stayed on defendants paying costs into court.

after provided) shall be stayed until the end of the then next session of Parliament.

Plaintiff to give notice to defendant of his intention to proceed. Section 2. enacts that after the end of the then next session of Parliament, it shall be lawful for the plaintiff, in any action or suit, in which the defendant shall have caused the proceedings to be stayed, under the provision thereinbefore contained, to give notice to the defendant of his intention to proceed in such action or suit, and to proceed therewith accordingly; and in every such case the defendant shall, immediately after such notice so given, be entitled to receive out of Court, the sum which such defendant shall have previously paid into Court on account of the costs of the plaintiff.

Section 3 provides that if the plaintiff accepts the costs, all proceedings shall be abandoned.

Section 4 extends the former provisions to the successors, heirs, executors, administrators, or assigns of any plaintiff, whose action or suit may be so stayed.

Section 5 provides that the Judges may upon sufficient cause shown, permit actions to be proceeded with.

Section 6 provides, that nothing in the act contained shall prevent the prosecution of any suit in law or equity for the recovery of tithes claimed or demanded previous to the passing of the said recited act, or for the recovery of the value thereof.

FINES AND RECOVERIES. (*Ireland.*)

4 & 5 Will. 4.
c. 92.

Since the fifth volume of this work was printed the statute 4 & 5 Will. 4. c. 92. has been passed, for abolishing fines and recoveries in Ireland, and for the substitution of more simple modes of assurance. The stat. 3 & 4 Will. 4. c. 74. as observed in Vol. V. p. 63, did not extend to Ireland, except in some particulars there noticed. With a few alterations, the Irish is an echo of the English act, with the omission of those clauses in the latter which are not applicable to Ireland; such as those which relate to lands held by the tenure of ancient demesne (ss. 4, 5, 6.) and to copyholds (ss. 50, 51, 52, 53, 54. 66. 76. 90.), which tenures have no existence in Ireland.

A doubt has been entertained in reference to the statute

3 & 4 Will. 4. c. 74., whether by virtue of s. 77. a married woman trustee can "*disclaim*," by a disposition duly acknowledged according to the act: and the Editor ventured to express his opinion in a former volume (IV. p. 19. note), that she might; and his reason for that opinion was, that although there might not be words in the clause, which technically and strictly applied to the interest of the *feme covert* trustee, which, until the trust is accepted, is a potential rather than an actual "estate," yet that it would be in entire accordance with the spirit and intent of the act, to construe a disclaimer within the operation of the clause, as the act is intended to substitute assurances for fines and recoveries; and before the act a *feme covert* trustee might have disclaimed by fine. And by the glossary clause, s. 1. the word "*estate*" extends to any "*interest*" *in, upon, or affecting lands*, either at law or in equity. With respect to Ireland, this question is obviated by the introduction of the word "*disclaim*" into section 68., which corresponds with section 77 of the English act.

The clauses relating to "money land" and to bankruptcy, which in the English act are made applicable to Ireland, are re-enacted in the Irish act.

Section 22 is a new and important clause, not in the English Sec. 22. act. It empowers persons to dispose of contingent estates and interests in lands by any assurance, whether by deed or will or other instrument, by which they might dispose of the estate or interest if vested. The following are the words of the clause: "That from the 31st October, 1834, it shall be lawful for any person, either before or after he shall become entitled in any manner, except as expectant heir of a living person, or as expectant heir of the body of a living person, to an estate in lands, not being a vested estate, and whether he be or be not ascertained as the person, or one of the persons, in whom the same may become vested, to dispose of such lands, for the whole or any part of such estate therein, by any assurance, whether deed, will, or any other instrument, by which he could have made such disposition, if such estate were a vested estate in possession: provided nevertheless that no such disposition shall be valid or have any effect, where the person making the same, shall not, at the time of the disposition, have become entitled to such estate, unless the deed, will, or other instrument, by virtue

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of which he may become entitled, be existing and in operation at the time of the disposition."

It has been considered doubtful whether, under the English act, a feme covert could, by deed, dispose of contingent estates and interests.

The recent decision of *ex parte Mary Gill*, 1 Bing. N. S. 168., in the C. B., would, if law, seem to remove this doubt. In that case, upon an affidavit that the husband of the applicant had absconded in 1831, after committing an act of bankruptcy, had never been heard of since, but was believed to be in America, leave was obtained, under the 3 & 4 Will. 4. c. 74. ss. 77. 91., to pass her contingent life interest in certain freehold property.

Court of Common Pleas in the case of a husband being lunatic, &c., may dispense with his concurrence, except where the Lord Chancellor or other persons intrusted with lunatics, or the Court of Chancery shall be the protector of a settlement in lieu of the husband.

By section 91. it is enacted, that if a husband shall, in consequence of being a lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, or shall from any other cause be incapable of executing a deed, or of making a surrender of lands held by copy of court-roll, or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever, it shall be lawful for the Court of Common Pleas at Westminster, by an order to be made in a summary way, upon the application of the wife, and upon such evidence as to the said Court shall seem meet, to dispense with the concurrence of the husband in any case in which his concurrence is required by the act or otherwise; and all acts, deeds, or surrenders, to be done, executed, or made by the wife, in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested in the purchase of lands, shall be done, executed, or made by her in the same manner as if she were a feme sole; and when done, executed, or made by her, shall (but without prejudice to the rights of the husband, as then existing independently of this act) be as good and valid as they would have been if the husband had concurred. And it was thereby provided, that that clause shall not extend to the case of a married woman, where, under the act, the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal, or either the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot,

and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement in lieu of her husband.

Section 77 of the act will be found, Vol. IV. pp. 18, 19. That section authorises a married woman in conformity with the provisions of the act, to dispose of any estates in lands as fully as she could do if she were a *feme sole*. As a *feme sole*, independently of the act, she could not at law by deed have conveyed a contingent interest; but it would seem that the Court of C. B. was of opinion that the act authorises such a disposition.

As the application in the above case was *ex parte*, most probably the point was not pressed upon the attention of the Court, otherwise it is conceived it would have come to a different determination. (a)

Vide supra,
Vol. VI. Tit.
38. c. 20. note
to s. 51.

TRUST FOR THE SEPARATE USE OF A FEME COVERTE RESTRAINING ANTICIPATION.

A question has arisen whether the 77th section of the stat. 3 & 4 Will. 4. c. 74., will enable a *feme coverta*, with the concurrence of her husband, to convey or defeat her interest in real estate, settled to her separate use, in the usual form, restraining anticipation during coverture.

This provision for the protection of married women originated with Lord Thurlow in Miss Watson's case, (18 Ves. 434.) and has ever since been fully recognised by the succeeding Judges in courts of equity, (2 Mer. 487, 488). The decisions of the present Chancellor (Woodmeston v. Walker, and Brown v. Pocock, 2 Rus. & Myl. 204—212) and Vice-Chancellor, (Newton v. Reid, 4 Sim. 141.), which show that the restraint is not effectual in the case of a *feme sole*, even as a provision for future marriage, generally, proceed upon, and fully confirm the distinction between that case, and the provisions made for coverture actually existing, or in immediate contemplation.

The whole system both of private settlements, and still more of settlements by the Court of Chancery on its wards, proceeds upon the assumption that such restraint upon alienation is effectual; and the consequences would indeed be serious, if, by a side wind, the late act were allowed to subvert it. But it is conceived that the act will have no such operation.

(a) See the observations on section 77 of the above act, in page 16 infra.

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The interest which a *feme coverta* derives from this trust of real estate for her separate use, is of a very peculiar nature; it is constructed by equity for an especial purpose; and it may be considered as conferring upon her a right to receive the rents and profits accruing *de anno, in annum*; as being, in effect, not in her, until the yearly or other period of payment arrives; so that unless the assurances, under the recent statute, operate by estoppel, (which it seems clear they do not) it may be thought that on this ground alone, she would be disabled from passing more than the rent actually due.

But the answer which more directly negatives the construction now under consideration, is that the power of alienation conferred on a married woman by the 77th section, is given by express reference to that which was possessed by a *feme sole* at the passing of the act: the words of the act are "as fully and effectually as she could do, if she were a *feme sole*." There is a parallelism (so to speak) established by the act, a conformity of ownership recognised, between the *feme coverta* and the *feme sole*; and a co-extensive power of alienation thereby conferred upon the former, in reference to that enjoyed by the latter, independently of the act. The obvious inference, therefore, is, that the legislature never intended to include an interest, which a *feme sole* can never have; an interest conferred by the trust for separate use, with a restraint upon alienation *during coverture*; an interest confessedly *sui generis*, which equity has constructed for the protection of a *feme coverta* only.

The general scope of the act is also to be considered: it professes to provide a substitute for fines and recoveries: and it is quite clear that the power of alienation, supposed to result from the extensive wording of the 77th section, could not previously have been attained through the medium of a fine or recovery. It may be further urged in objection to this construction of the section, that, if it empowers the husband and wife to dispense with the restraint upon alienation, that uniformity will be henceforth destroyed, which has hitherto regulated the administration of equitable jurisdiction, regarding trusts for the separate use of married women. For as the act applies to dispositions of *real estate only*, the law, as to personality, remains unaltered; so that the restraint upon alienation during coverture, which, when affecting the latter description of property, would be enforced in

equity, might, when applied to the former, through the medium of the act, be rendered nugatory: and thus in the administration of the same identical trust, one law would be established for real, and another for personal estate.

The serious consequences which would result, from the adoption of such a construction of the 77th section of the act, as that above noticed, must serve as the Editor's apology for this prolonged discussion, which he now dismisses with the hope, if not with the conviction, that the construction suggested will not meet with any countenance from the profession or the bench.

RECOVERY—*Tenant to the Præcipe.*

It has long been an unsettled point whether the tenant to the *præcipe* in a prior recovery, defective on account of the actual freehold being outstanding, was a necessary party in a new recovery, either as being himself the tenant to the *præcipe* in such new recovery, or as concurring in the conveyance to a new tenant. The reader will find the subject discussed by Mr. Preston, in his Treatise on Conveyancing, vol. i. p. 90. *et seq.* He there observes (p. 92.) “But whenever it shall be necessary to support a title, on an adverse litigation, merely on account of the want of such conveyance, it may be contended, (and it would seem with great chance of success) that the former recovery was good, as between the parties; that the estate conveyed to the tenant was drawn out of him, by the operation of the recovery; and that the declaration of the uses governs the legal title as between the parties.”

This reasoning was adopted by Sir L. Shadwell, V. C. in a recent case. There estates in Kent had been conveyed unto and to the use of Thomas Charlton and John Charlton, and the heirs and assigns of Thomas; nevertheless as to the estate of John in trust for Thomas, his heirs and assigns. Thomas, by will in 1791, devised his real estates to his son Thomas in tail, and died in 1793. In 1800, Thomas, the son, (without the concurrence of John Charlton, the trustee, who was then living) conveyed the estates to Robert Debary, in fee to make him tenant to the *præcipe*, for suffering a recovery to enure to the use of Thomas,

In re Debary,
5 Sim. 283.

the son, in fee. Thomas afterwards sold portions of the estates. Richard Debary died in 1826, intestate, leaving four infant sons his co-heirs in gavelkind. Objections having been taken by the purchasers to the recovery in 1808, it was proposed that a new recovery should be suffered by Thomas, the son, (John, the trustee, being then dead.) On a petition by Thomas, the son, and the purchasers under the 11 Geo. 4. & 1 Will. 4. c. 60. a reference was made to the Master to enquire whether the sons of Debary were infant trustees under the Act, who certified his opinion in the negative. Upon a further petition the Vice-Chancellor concurred with the Master, and declared that no legal estate was vested in the infant co-heirs of Richard Debary, and refused to make any order on the petition : his honour observed, although the recovery did not bar the estate tail, it had the effect of drawing out the legal estate, which was vested in Debary, for the purpose of making him tenant to the *præcipe*.

It may be observed, that this reasoning rests entirely on the proposition that the recovery is voidable, and not void ; there seems some ground for contending that as the tenant to the writ had not the freehold, so nothing could be recovered against him, and he could have no recompense in value against the vouchee for what he had lost. It may therefore be urged that the recovery was nugatory, and that the legal fee remained in Debary. The point, however, would seem now to be one rather of speculation than of practical importance, for the 11th section of the 3 & 4 Will. 4. c. 74. remedies the defect above mentioned. See Vol. V. p. 353. (a)

GENERAL ORDERS (a)

Relating to the Acknowledgment of Dispositions by Married Women, under 3 & 4 Will. 4. c. 74.

The following General Orders were made in Michaelmas Term, 1833; they are revoked by the orders made in the following Hilary Term, 1834; but as such revocation is with a proviso *Infra*, p. 23. that it shall not be construed to invalidate any proceedings, which, before the 1st day of March then next ensuing, (1834) shall have been taken pursuant to the direction of the said rules of Michaelmas Term, it was thought proper to insert them here, in reference to dispositions made in the interim between Michaelmas Term, 1833, and Hilary Term, 1834.

The Orders of Michaelmas Term, 1833. (b)

Whereas by the 48th section of the statute made in the 3d & Fines and recov-
4th years of the reign of his present Majesty, chapter 74, intituled veries.

"An act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance," the Court of Common Pleas is authorised from time to time, to make alterations in the memorandums and certificates in the said section mentioned.

And whereas, by the 89th section of the said act, it is enacted, "That the Lord Chief Justice of the Court of Common Pleas, at Westminster, shall from time to time appoint the person who shall be the officer, with whom, such certificates as in the said act are mentioned, shall, for the time being, be lodged, and may remove him at pleasure; and that the Court of Common Pleas, at Westminster, shall, also from time to time, make such orders and regulations as the said Court shall think fit, touching the mode of examination to be pursued by the Commissioners, to be appointed under the said act, and touching the particular matters to be mentioned in such memorandums and certificates as therein mentioned, and the affidavits verifying the certificates, and the time within which any of the aforesaid proceedings

(a) Referred to Vol. V. p. 117. note. (b) See Moore & Scott, Rep. vol. iii. p. 871.

*Appendix.***Certificate.**

shall take place." Now it is ordered that in addition to the form of the certificate mentioned in the 84th section of the said act, after stating the names of the parties and the words, "and acknowledge the same to be her act and deed," the following words should be inserted, "and I [or we] do further certify, that the several premises comprised in the said indenture, are situate in the parish [or several parishes] and place [or places] following, that is to say, in the parishes of —, [as the case may be], in the county of —."

One of the commissioners at the least not to be concerned for the parties.

And it is further ordered, that, where the acknowledgment shall be made before Commissioners appointed under the said act, one at least of the said commissioners shall be a person who is not concerned as the attorney, solicitor, or agent, or clerk to the attorney, solicitor, or agent, of any of the parties in the transaction giving occasion to the taking such acknowledgment; and that, in the affidavit verifying the certificate, it shall be deposed, in addition to the verification thereof, that one or more of the persons making such affidavit, knew the person or persons making such acknowledgment, and that at the time of making such acknowledgment, the person or persons making the same was or were of full age and competent understanding, and that one at least of the Commissioners taking such acknowledgment, is not the attorney, solicitor, or agent, or clerk to the attorney, solicitor, or agent, of any of the said parties; and that the names and residences of the said Commissioners, and also the place or places where such acknowledgment or acknowledgments shall be taken, shall be mentioned in such affidavit.

Inquiry to be made of married women.

And it is further ordered, that the Commissioners do enquire of married women, whether they intend to give up their interest in the estate to be passed by such deed, without having any provision made for them in return for, or in consequence of their so giving up such interest; and if it appears that any provision is to be made for any such married woman, they shall not take her acknowledgment until they are satisfied that such provision has been actually made; and one of the said Commissioners shall state in the affidavit so to be made as aforesaid, that such inquiry was made, and also the answer given thereto; and where any such provision has been agreed to be made, that he the said Commissioner is satisfied that the same has been made; and where such married woman, in answer to such in-

quiry, shall declare that she intends to give up her interest without any provision, that he, the said Commissioner, has no reason to doubt the truth of such declaration, and verily believes the same to be true.

And it is hereby further ordered that the affidavits verifying such certificate, where the acknowledgment is taken by a Judge or Master in Chancery, be in the form hereunto annexed, marked A.; and where, before any of the Commissioners appointed in pursuance of the said act, in the form hereunto annexed, marked B., with such variations only as the circumstances of the case shall render necessary.

And it is hereby further ordered, that the certificates and the affidavits verifying the same, shall be delivered to the officer to be so appointed within one month from the making the acknowledgment, and that the officer shall not receive the same after that time, without the direction of the Court or a Judge.

Affidavits verifying certificates.

Certificates and affidavits to be delivered within one month to the proper officer.

A.

Form of Affidavit verifying the certificate where the acknowledgment is taken before a Judge or Master in Chancery.

A. B. of — maketh oath and saith, that he knows —, the wife of —, in the certificate hereunto annexed, mentioned; and that the acknowledgment therein mentioned was made by the said —, and the said certificate signed by the said — [Judge or Master,] therein mentioned, in the presence of this deponent. And this deponent further saith, that the said — was at the time of making such acknowledgment, of full age and competent understanding.

B.

Form of Affidavit verifying the certificate where the acknowledgment is taken by any of the Commissioners appointed in pursuance of the Act of Parliament.

A. B. of —, in the county of —, gentleman, one of the attorneys of his Majesty's Court of —, at Westminster, and one of the Commissioners named in the certificate hereunto annexed, maketh oath and saith, that he knows —, the wife of —, in the said certificate mentioned, and that the acknowledgment therein mentioned was made by the said —, and the certificate signed by the Commissioners in the said cer-

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tificate mentioned, on the day and year therein mentioned, at _____, in the county of _____, in the presence of this deponent; and that at the time of making such acknowledgment, the said _____, was of full age and competent understanding; and that the said _____, knew the same acknowledgment was intended for the passing her estate and estates in the premises respecting which such acknowledgment was made. And this deponent further saith, that he, this deponent, [or the said J. K., *as the case may be, adding, if not the Commissioner making the affidavit,* whose place of residence is at _____,] is not concerned as the attorney, solicitor, or agent, or clerk to the attorney, solicitor, or agent, of any or either of the parties to the transaction, giving occasion to the taking such acknowledgment. And this deponent further saith, that, in pursuance of the order made by the Court of Common Pleas, in Michaelmas Term, 1833, the said Commissioners, did inquire of the said _____, [or, if more than one of each of them the said _____,] whether she intended to give up her interest in the estates, in respect of which such acknowledgment was taken, without having any provision made for her in return for, or in consequence of her so giving up her interest in such estates; and that in answer to such inquiry the said _____ declared that she did intend to give up her interest in the said estates without having any provision made for her in return for, or in consequence of her so giving up her interest; which declaration of the said _____ this deponent has no reason to doubt the truth of, _____, and verily believes the same to be true, [or declared that a provision was to be made for her in consequence of her giving up her interest in the said estates:] and this deponent before her acknowledgment was so taken, was satisfied, and does now verily believe that such provision has been made.

N. B. When the whole of the facts cannot be spoken to by one deponent, the necessary alterations must be made, to enable more than one deponent to state their respective parts of it.

The Orders of Hilary Term, 1834. (a)

Fines and
Recoveries.

Whereas, it has been found expedient to make alterations in the General Rules made in Michaelmas Term last, by this Court, for the purpose of carrying into effect the statute passed in the

(a) 10 Bing. 458. Referred to Vol. V. p. 117. note.

third and fourth years of the reign of his present Majesty, cap. 74. intituled, " An Act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance."

And whereas, it is necessary to make orders touching the amount of the reasonable fees and charges to be taken by the several persons appointed to carry the powers of the said act into execution ; and it will be convenient that all the orders and regulations made by the Court under the said act shall be contained in the same rule.

Now it is hereby ordered that the said General Rules be, and the same are, hereby revoked : provided that this present rule shall not be construed in any respect to invalidate any proceedings which, before the first day of March next ensuing, shall have been taken, pursuant to the direction of the said rules of Michaelmas Term last.

And it is hereby further ordered that where any acknowledgment shall be made by any married woman of any deed under, and by virtue of the said act, before Commissioners appointed under the said act, one at least of the said Commissioners shall be a person who is not in any manner interested in the transaction, giving occasion for such acknowledgment, or concerned therein, as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent, so interested or concerned.

And it is further ordered, that before the Commissioners shall receive such acknowledgment, they, or in case one of them shall be interested or concerned as aforesaid, then such one of them as shall not be so interested or concerned, do inquire of every married woman, separately and apart from her husband, and from the attorney or solicitor concerned in the transaction, whether she intends to give up her interest in the estate to be passed by such deed, without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up such interest ; and where such married woman, in answer to such inquiry, shall declare that she intends to give up such her interest without any provision, and the said Commissioners shall have no reason to doubt the truth of such declaration, and shall verily believe the same to be true, then they shall proceed to receive the said acknowledgment ; but if it shall appear to them, or to such one of them as aforesaid, that it is intended that provision is to be made for any such married woman, then the Commis-

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sioners shall not take her acknowledgment until they are satisfied that such provision has been actually made by some deed, or writing, produced to them ; or, if such provision shall not have been actually made before, then the Commissioners shall require the terms of such intended provision to be shortly reduced into writing, and shall verify the same by their signatures in the margin, at the foot, or at the back thereof.

And it is hereby further ordered, that the affidavit verifying the certificate to be made pursuant to the said act, and which certificate shall be in the form contained in the said act, shall (except in such cases where the acknowledgment shall be taken elsewhere than in England, Wales, or Berwick-upon-Tweed,) be made by some practising attorney, or solicitor of one of the Courts at Westminster, or of one of the Counties Palatine of Lancaster or Durham ; and that in all cases it shall be deposited, in addition to the verification of the said certificate, that the deponent, or (if more than one person join in the affidavit) that one or more of the deponents, knew the person or persons making such acknowledgment, and that at the time of making such acknowledgment the person or persons making the same was, or were of full age and competent understanding ; and that one at least of the Commissioners taking such acknowledgment to the best of his, deponent's knowledge and belief, is not in any manner interested in the transaction giving occasion for the taking of such acknowledgment, or concerned therein, as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent, so interested or concerned ; and that the names and residences of the said Commissioners, and also the place or places where such acknowledgment or acknowledgments shall be taken, shall be set forth in such affidavit ; and that previously to such acknowledgment being taken, the deponent had inquired of such married woman (or, if more than one, of each of such married women) whether she intended to give up her interest in the estate to be passed ? and also the answer given thereto ; and where any such married woman, in answer to such inquiry, shall declare that she intends to give up her interest without any provision, the deponent shall state that he has no reason to doubt the truth of such declaration, and he verily believes the same to be true. And where any provision has been agreed to be made, the deponent shall state that the same has been made by deed or writing, or if

not actually made before, that the terms of the intended provision have been reduced into writing, which deed or writing he verily believes has been produced to the said (Judge,) (Master, or) Commissioners.

And it is hereby further ordered, that the affidavit shall state the parish, or several parishes, or place or several places, and the county or counties in which the several premises, wherein any such married woman shall appear to be interested, shall, by deed, be described to be situate.

And it is hereby further ordered, that the affidavit shall be in the form hereunto annexed, subject to such variations as the circumstances of the case shall render necessary, or such affidavit may be made where it is found convenient by one of the said Commissioners, with such variation in the form thereof as shall be necessary in that behalf.

And it is hereby further ordered, that the certificates and affidavits verifying the same, shall, within one month from the making the acknowledgment, be delivered to the proper officer appointed under the said act; and that the officer shall not, after that time, receive the same without the direction of the Court or a Judge.

Then follow the orders respecting the fees.

Form of Affidavit verifying the certificate of acknowledgment taken in pursuance of the Act of Parliament to be made by some practising attorney or solicitor, and to be sworn before a Judge of the Court of Common Pleas, or a Commissioner appointed for taking affidavits in the said Court.

In the Common Pleas,

A. B. of —, in the — of —, gentleman, one of the attorneys (or solicitors) of the Court of —, maketh oath and saith, that he knows —, the wife of —, in the certificate hereunto annexed mentioned, and that the acknowledgment therein mentioned was made by the said —, and the certificate signed by the Judge or Master, or by A. B., of &c., and C. D., of &c., the Commissioners in the said certificate mentioned, on the day and year therein mentioned, at —, in the — of —, in the presence of this deponent, and that at the time of making such acknowledgment, the said —, was of full age and competent understanding, and that the said —, knew the said acknowledgment was intended to pass her estate in the

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premises, respecting which such acknowledgment was made, [and this deponent further saith, that to the best of this deponent's knowledge and belief, neither of the said Commissioners is (or the said A. B., or the said C. D., one of the said Commissioners is not) in any manner interested in the transaction giving occasion for such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent, so interested or concerned.] (a) And this deponent further saith that previous to the said ——, (the married woman) making the said acknowledgment, he this deponent enquired of the said ——, (the married woman) or if more than one, of each of them the said ——, and —— (the married women) whether she intended to give up her interest in the estates, in respect of which such acknowledgment was taken, without having any provision made for her in lieu of or in return for, or in consequence of her so giving up her interest in such estates, and that in answer to such enquiry the said ——, (the married woman) declared that she did intend to give up her interest in the said estates, without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up such, her interest; of which declaration of the said ——, (the married woman) this deponent has no reason to doubt the truth, and verily believes the same to be true, or declared that a provision was to be made for her in consequence of her giving up such her interest in the said estates. And this deponent lastly saith, that before her acknowledgment was so taken, he was satisfied, and does now verily believe that such provision has been made by deed or writing, or that the terms thereof have been reduced into writing, and that such deed or writing has been produced to the said Judge, Master, or Commissioners. And lastly, this deponent saith that it appears by the deed acknowledged by the said ——, (the married woman) that the premises wherein she is stated to be interested are described to be in the parish or place of ——, or parishes or places of ——, and ——, in the county of ——, or counties of ——, (as the case may be.)

Sworn, &c.

N. B. When the whole of the facts cannot be spoken to by one deponent, variations may be made to enable more than one deponent to state their respective parts of the affidavit.

(a) This is to be omitted when acknowledgment taken by a Judge or Master.

ERRATA ET CORRIGENDA.

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- Page 79. sect. 12. line 8. for "affected" read "effected."
102. —— 5. line 1. for "13" read "19."
112. line 3. for "cestui que vie" read "grantee."
129. sect. 60. line 2. for "him" read "himself."
136. —— 11. line 7. omit "which."
140. —— 5. line 4. for "require" read "acquire."
172. —— 21. line 1. for "requires" read "acquires."
173. —— 28. line 1. for "40" read "41."
179. —— 21. line 4. after "years" insert "to commence from his decease." and
to the margin add "3 Bro. P. C. 483."
184. line 12. for "devisee" read "devise."
198. 9th line from bottom, for "of an infant" read "if an infant."
200. note (g). line 2. for "Drury v. Drury" read "Earl of Bucks v. Drury," and
after "ubi supra," add "see also Drury v. Drury, Co.
Lit. 36 b. n. 7."
211. line 16. for "1782" read "1712."
233. sect. 15. marg. line 3. for "63" read "53."
236. —— 29. line 4. omit "in."
240. —— 46. marg. line 2. for "94" read "97."
291. —— 58. line 1. for "& Will." read "& 4 Will."
301. —— 33. marg. line 4. for "id" read "Popham v. Lancaster."
317. —— 43. line 1. after "Will. 4." insert "c. 69. s. 9."
400. —— 76. marg. line 5. for "Coke's" read "Cox."
403. —— 90. line 1. for "from" read "for."
413. —— 34. marg. line 4. for "263" read "363."
425. —— 28. line 1. for "so it said" read "so it was said."
427. —— 34. line 7. for "trusted himself" read "trustee for himself."
449. —— 9. line 4. for "join in" read "join with."
455. —— 40. line 7. for "the receiver" read "they receive."
460. —— 64. marg. line 6. for "s. 21" read "s. 22."

VOL. II.

- Page 61. sect. 103. line 10. for "cognizor" read "cognizee."
104. —— 25. marg. line 6. for "2 Ib." read "2 P. Will."
121. —— 85. line 1. for "mortgagee" read "mortgagor."
166. —— 15. line 2. for "mortgagee" read "mortgagor."
216. —— 46. marg. line 2. for "97" read "79."
297. —— 21. marg. line 4. for "674" read "684."
327. —— 7. marg. line 3. for "389" read "380."
370. —— 34. marg. line 3. for "291" read "290."
381. —— 18. line 16. for "of that" read "that of."

VOL. III.

- Page 32. line 16. for "beneficial" read "beneficed."
98. sect. 23. line 2. for "officers" read "offices."
254. note and margin, for "2 & 3" read "1 & 2."
418. line 4. for "c. 12." read "c. 80. s. 12."

VOL. V.

- Page 353. note, s. 10. line 2. for "valid" read "invalid."
427. note, last line, for "parol did" read "parol did not demur."

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